

1 EDMUND G. BROWN JR.
Attorney General of California
2 GREGORY J. SALUTE
Supervising Deputy Attorney General
3 KEVIN J. RIGLEY
Deputy Attorney General
4 State Bar No. 131800
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 620-2558
6 Facsimile: (213) 897-2804
Attorneys for Complainant

8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. **2010-439**

13 **BIENVENIDA C. MUSNGI**
1435 Stanley Ave., Apt. 234
Glendale, CA 91206

ACCUSATION

15 Registered Nurse License No. 471412

16 Respondent.

17 Louise R. Bailey, M.Ed., RN (Complainant) alleges:

18 **PARTIES**

19 1. Complainant brings this Accusation solely in her official capacity as the Interim
20 Executive Officer of the Board of Registered Nursing (Board), Department of Consumer Affairs.

21 2. On or about August 31, 1991, the Board issued Registered Nurse License
22 Number 471412 to Bienvenida C. Musngi (Respondent). The Registered Nurse License was in
23 full force and effect at all times relevant to the charges brought herein and will expire on April 30,
24 2011, unless renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board under the authority of the following
27 laws. All section references are to the Business and Professions Code unless otherwise indicated.
28

1 4. Section 2750 of the Business and Professions Code (Code) provides, in pertinent part,
2 that the Board may discipline any licensee, including a licensee holding a temporary or an
3 inactive license, for any reason provided in Article 3 (commencing with section 2750) of the
4 Nursing Practice Act.

5 5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license
6 shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the
7 licensee or to render a decision imposing discipline on the license.

8 STATUTORY PROVISIONS

9 6. Section 2761 of the Code states:

10 "The board may take disciplinary action against a certified or licensed nurse or deny an
11 application for a certificate or license for any of the following:

12 ...

13 "(f) Conviction of a felony or of any offense substantially related to the qualifications,
14 functions, and duties of a registered nurse, in which event the record of the conviction shall be
15 conclusive evidence thereof.

16 7. Pursuant to section 1444 of the California Code of Regulations, title 16, a conviction
17 or act shall be considered to be substantially related to the qualifications, functions or duties of a
18 registered nurse if to a substantial degree it evidences the present or potential unfitness of a
19 registered nurse to practice in a manner consistent with the public health, safety, or welfare. Such
20 convictions or acts shall include but not be limited to the following:

21 ...

22 (c) Theft, dishonesty, fraud, or deceit.

23 8. Section 2764 of the Code provides, in pertinent part, that the expiration of a license
24 shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against
25 the licensee or to render a decision imposing discipline on the license.

26 9. Section 2811(b) of the Code provides, in pertinent part that the Board may renew
27 an expired license at any time within eight years after the expiration.
28

10. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

11. Section 493 of the Code states:

"Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

"As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and 'registration.'"

COST RECOVERY

12. Code section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FIRST CAUSE FOR DISCIPLINE

(Conviction of a Crime Substantially Related to the Qualifications, Functions, or Duties of a Registered Nurse)

13. Respondent is subject to discipline under Code section 2761(f), in conjunction with section 1444 of the California Code of Regulations, title 16, in that on or about July 31, 2006, in the case of *United States of America v. Bienvenida C. Musngi*, (United States District Court, Central District of California, Case No. CR05-1207-GAF), Respondent was convicted by the

1 Court on her plea of guilty of violating United States Code, Title 18, Section 1347 (Health Care
2 Fraud), a Class C Felony that is substantially related to the qualifications, functions or duties of a
3 licensed registered nurse. The circumstances of the crime were that on or about July 17, 2004,
4 Respondent knowingly and willfully and acting with intent to defraud, executed and attempted to
5 execute a scheme and artifice to defraud a health care benefit program, to wit: Medicare, by
6 causing a claim to be submitted to Medicare for home health services that were unnecessary and
7 supported by falsified medical records. Her sentence included an order that she pay restitution in
8 the amount of \$365,550.32.

9 PRAYER

10 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
11 and that following the hearing, the Board issue a decision:

12 1. Revoking or suspending Registered Nurse License Number 471412, issued to
13 Bienvenida C. Musngi Bienvenida C. Musngi.

14 2. Ordering Bienvenida C. Musngi to pay the Board the reasonable costs of the
15 investigation and enforcement of this case, pursuant to Business and Professions Code section
16 125.3;

17 3. Taking such other and further action as deemed necessary and proper.
18
19

20 DATED: 3/17/10

21 *Louise R. Bailey*
22 LOUISE R. BAILEY, M.Ed., RN
23 Interim Executive Officer
24 Board of Registered Nursing
25 Department of Consumer Affairs
26 State of California
27 Complainant
28

LA2009603371
accusation.rtf